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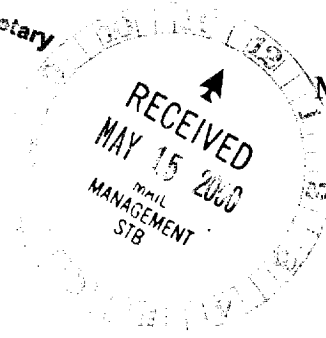
Direct-Mill Carload & Truckload Wholesalers, Serving 34 States With Forest Products

JAMES JOHNSON
TRAFFIC MANAGER
email: jamesjohnson@att.net

Via Airborne Express Air bill 3573429285

Office of the Secretary
Case Control Unit
ATTN: STB Ex Parte No. 582 (Sub-No.1)
Surface Transportation Board
1925 K Street, N.W.
Washington DC 20423-0001

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Office of the Secretary
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May 12, 2000

RE: STB Ex Parte No. 582 (Sub-No.1)
Major Rail Consolidation Procedures

Dear Secretary Williams:

Please find enclosed an original and 25 copies of the Statement of James Johnson on behalf of Empire Wholesale Lumber Co. in the referenced proceeding. Also enclosed is a 3 1/2" diskette containing two electronic copies of the statement, one in rich text format (generated from Microsoft Word 2000) and one in WordPerfect 6.1 (generated from the rich text format).

Sincerely,


James Johnson
Traffic Manager

Encl.



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Public Record



**Before
The
Surface Transportation Board**

**In the matter of

Ex Parte 582 (Sub-No. 1)
Major Rail Consolidation Procedures**

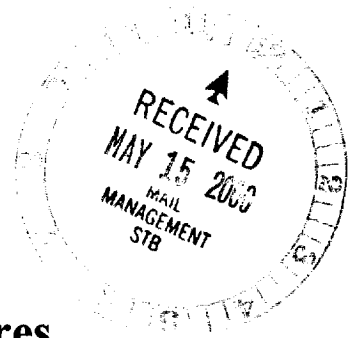
**Statement
Of**

**James Johnson
Traffic Manager
Empire Wholesale Lumber Co.**

By
James Johnson
Traffic Manager
Empire Wholesale Lumber Co.
P O Box 249
Akron OH 44309

May 12, 2000

In the matter of
Ex Parte 582 (Sub-No. 1)
Major Rail Consolidation Procedures



Comes now James Johnson, on behalf of Empire Wholesale Lumber Co., and respectfully requests that the following comments be entered into the official record of this proceeding.

IDENTITY OF WITNESS

My name is James Johnson. I have over 35 years experience in interstate and foreign surface transportation, including over 4 years as the Cleveland District Supervisor of the Interstate Commerce Commission (1974 – 1978). I have been honored for the past four years to be a shipper representative on the Railroad-Shippers Transportation Advisory Council. I am the Chairman of the Summit County Port Authority and for the past 14 years I have been employed by Empire Wholesale Lumber Co. of Akron OH as traffic manager of this wholesale distributor of forest products. Empire trades in forest products produced in Canada and the United States. Empire moves products in carload and truckload quantities, virtually all of our over \$160,000,000 in annual sales are in the United States. Additionally, Empire uses origin and destination reload facilities spread from Sioux City SD to Jacksonville FL to service a customer base which requires shipments consisting of mixed products to maximize their inventory investment.

Until recently, Empire was affiliated with several companies that operated at the retail and contractor supply level of forest products distribution. I represented each of those affiliated companies for purposes of negotiation of sidetrack agreements, industrial real estate purchases, railroad claims, and community economic development activity.

Empire and one of the then-affiliated companies were involved in resisting a Conrail abandonment of the Akron OH shippers. As a result of business community resistance that I personally rallied and coordinated, the Wheeling and Lake Erie today owns and operates that track. All of the Akron OH businesses that joined the abandonment resistance realized then how important rail service is to support community economic development; and they now realize that a shortline or regional railroad is a valuable component in our community's effort to attract new businesses. The following comments are grounded in my firm belief that railroad operations must

encourage economic development, particularly in smaller communities. Most small communities are dependent upon a few modest sized companies for an employment base. Small and modest sized companies create most employment in this country.

COMMENTS

After five score and eighteen years of regulating the transportation of passengers and freight by railroad we are now poised at the threshold of a new era – life after the triumph of self-deception and greed. I think that, for too many years, we have debated the minutiae and totally lost sight of our goal.

This country expanded to fill a continent in less than a century from the invention of the railroad. The velocity of inventory made possible by parallel steel tracks allowed our economy to even absorb two “world” wars and over two-dozen other military mobilizations during that growth period. And yet, in the face of this unprecedented success, we allowed this valuable asset to decline into a virtual collapse by the late 1960’s.

In part, the decline was a result of motor carrier competition and the investment we poured into the interstate highway system. But, in truth, railroad management also fueled the decline of the financial health of the rail industry. Railroad management diverted capital to buy hotels, real estate, competing mode transportation companies, and millions of dollars of other “investments” that were made at the expense of maintaining the infrastructure. Railroad labor was a fairly willing partner in the decline, resisting valid labor saving technology to maintain the standard of living of its membership, while turning a completely blind eye to the long-term consequences.

The Board’s predecessor, the Interstate Commerce Commission (ICC), was not without fault. The ICC arguably allowed the railroads to control the debate agenda. The ICC allowed itself to be pulled into long technical arguments that consumed its resources and drained its ability or will to focus on the big picture. The ICC never really grasped the concept of proactive Congressional relations, and Congress never truly understood the ICC. The ICC was a Congressional agency with a remarkable collection of talent and a constitutionally defined mandate, and yet it managed to lose control of national transportation policy to an upstart executive agency. There is a lot of blame to go around, with plenty of it going to the shipping community.

Which brings us to the Staggers Act. By 1980 the railroad industry lobbyists convinced Congress that the dismal financial condition of railroads was pre-determined by the evils of regulation. So, Congress lessened regulation and the railroads became fiscally healthy. But did they become healthy because the lessening of regulation freed their entrepreneurial spirits? Or, did the railroad industry become healthy by littering the landscape with the broken bodies of small communities, merchandise shippers and union railroad employees cast off from the core system? Could it be possible that the dismal fiscal condition that the railroad industry found itself in by

1980 may have been the result of a management determination, not checked by the ICC, that hotels and real estate investments would create a greater return than ties and bridges?

Certainly, few if any railroad participants in this proceeding will answer the preceding questions in the affirmative. But, the simple fact that we now have over 525 shortline carriers – predominately non-union – makes me wonder. And now, Class I railroads have wrung out as many union employees as safely possible (even though many union representatives would argue that the cuts have been too deep to be safe), they have abandoned as many light density track miles as is comfortable (for them not the small communities or shortlines on those tracks), and they have rid themselves of as many pesky merchandise customers as they dare (at this time).

And yet, as one of my favorite writers – Lawrence Kaufman – pointed out recently in the *Journal of Commerce*, even with all of those impediments lifted from their shoulders, the Class I's have not kept pace with the market returns of other industries. The failure of Class I railroads to attract capital may or may not have been attributable to regulation, but the facts belie the argument that less regulation will encourage investors to purchase stock – only dividend growth will hold the attention of the financial community.

The number of class I railroads has now declined to the point where the impact on shippers and marketplace competition of any further merger activity will be geometrically greater than the impact of all earlier mergers. Many participants in this proceeding will undoubtedly point out the cost of flubbed mergers, like the Union Pacific – Southern Pacific fiasco. I believe that the long-term cost of the next round of mergers may be staggering in comparison, even if the mergers are totally devoid of similar operational problems.

The Surface Transportation Board exists for a purpose. It is my considered opinion that Congress did not create the Board for the purpose of protecting Class I railroads from themselves, or from shippers, or to insure that Class I railroads are investment darlings of Wall Street. I like to believe that Congress created the Board for the sole purpose of insuring that railroad transportation will be conducted in a manner that does not inhibit growth of the general economy. Congress did not establish a *laissez faire* philosophy for railroads. The Board was funded and authorized as Congress' watchdog over the railroad industry. The Board's constituency is not Class I railroads; it is those participants in the economy that depend upon railroad transportation to support their non-transportation economic activity. For the general economy to prosper several things must happen.

Every customer of a Class I railroad must have the guaranteed right, upon reasonable request, to receive service equal to the service afforded that party's competition (and if the "customer" is a shortline railroad, the customer's competition may even be the same Class I). Every customer of a Class I railroad must have the guaranteed right, upon reasonable request, to purchase service at a rate predicated upon the cost of providing that service, rather than the Draconian "what the market will bear".

Profit should not be unachievable for any railroad, but profit should be earned relatively equally from the charges assessed to all customers unilaterally predicated upon service provided, distance traveled and risks assumed. For example, a small captive shipper requiring a single monthly 650-mile movement on a flatcar should not be assessed materially different than a large shipper requiring a similar daily 650-mile movement on 100 separate flatcar shipments over a year's period of time. However, substantially identical shipments loaded at one time on multiple cars and moved with true operational economies (one switch to move from shipper's facility, mini-unit train type handling to destination, and one switch to place at receiver's facility – coal or chemical type movements) should reflect the actual savings realized from the economies of the coordinated movement.

To determine whether or not railroads are performing in a manner that does not inhibit growth of the general economy we need to determine what needs to be measured. Certainly, the pace that materials flow between participants is important. We should measure the fluidity and velocity of products between producers and consumers at every level. The UP-SP fiasco demonstrated how expensive it is to significantly increase investment in inventory. The cost of moving products between producers and consumers is important and should be measured. After all, the cost of a crew and two locomotives for an 8-hour trip is a known commodity. We cannot lose sight of the importance of having capacity to support national defense. Indeed, if the National Defense requirements are not met, we risk losing everything else from dumb neglect. And, I believe each railroad's contribution towards economic development or economic stagnation in the communities serviced by that railroad must be measured, rewarded or punished as appropriate.

The dismal economic performance of most railroads over the past half dozen years should be a clue that even with substantial relaxation of regulation it is difficult for a railroad to perform to a level that attracts an overwhelming amount of capital. Maybe financial investors do not understand railroads. Maybe, they do understand railroads and they are not overwhelmed with the capacity of a railroad to provide a consistent flow of dividends at levels competitive to other industries. Maybe, sale of stock certificates is not an appropriate way to finance a Class I railroad's capital needs. Maybe, just maybe, nationalization of the track and supporting infrastructure is a more appropriate way to finance and maintain a Class I railroad. Okay, maybe that was a bit extreme – but we may need to discuss some radical ideas if we are going to get back to basics. The alternative would appear to be to allow the Class I railroad industry to continue its programmed collapse into a duopoly or a monopoly that can better control its customers and pricing.

We have opportunities if we can just step back a bit and see them. The railroads have realized the value that an unbroken right-of-way represents to the owner of a fiber optic cable. Could that same unbroken right-of-way have an even greater value as a component in a national intelligent transport system on steel rails for toll paying high-speed automobile and truck transportation? Could the coupling of those technologies lead to individually motivated, robotically controlled railcars capable of achieving scheduled transit and consistent delivery with less labor? Could any of those occurrences result in faster or cheaper 100% grade separation?

For any good things to come out of future mergers we, as a nation, have to make some decisions now about the ultimate system. Maybe we start with trading some of the joint assets for approval of the merger. Maybe we allow BNSF to buy NS (or vice versa), but require that 22,000 miles of the combined track - of our choice - be sold to the U. S. government for 135% of net liquidated value. The government could then lease part of the operating capacity of the track to a consortium of shortlines to establish competitive service. Or, the track could be retrofitted with intelligent transportation systems to support toll road like private automobile, bus and truck transit between major hubs. Think of it as something akin to the Amtrak autotrain. You drive your Winnebago to a staging area in New Jersey, get placed on a flatcar or hooked directly to the rails, and go to Orlando or Dallas or San Diego at 90 miles per hour, non-stop, with a 10-foot vehicle separation. Much of the current track right-of-way would probably even be compatible with allowing the merger partners conduct freight operations on the at-grade track with a separate elevated monorail to handle the Winnebago crowd – double the capacity of the interstate highway system over a parallel infrastructure (I came up with that one, you think about how to handle tunnels).

The point is, we need to have these discussions now, and we need to determine what needs to be done for the national good. The consolidation process has reached the level where it is time to return to our roots. All transportation, including railroads, has to be recognized as existing for the primary purpose of supporting the economic activities of the non-transportation sector of the economy. If a railroad somehow manages to actually produce a consistent stream of dividends sufficient to attract investment meeting its full capital needs, but does not operate for the benefit of all the customers on its line, what benefit does it provide in the vast scheme of the nation economy? How long can we afford to tolerate a blind pursuit of financial self-gratification?

I do not pretend to have the answers; I only have a vague idea of what the questions should be at this point. The Advance Notice of Proposed Rulemaking in this proceeding is a good start. But I believe that even a broader approach is warranted.

I would like to comment on four of the specific issues raised in the ANPR.

Shortline and Regional Railroad Issues. Shortline and regional railroads are a valuable asset in the Board's handling of future mergers. I believe that, in selected instances, the Board should use directed service orders to make better use of some of the track owned and/or operated by the smaller railroads. Certainly the diversion of hazardous material shipments to rural shortline or regional track is preferable to using intercity Class I track. As demonstrated by the division of Conrail, numerous shortlines can provide significant additional capacity to circumvent congestion on Class I infrastructure. If further consolidation occurs in the Class I portion of the industry, the shortline and regional railroads must be vigorously shielded from detrimental effects as they represent the only viable way to promote true competition for communities and shippers locked into a duopoly structure. Directed line sales should be used to enhance the competitive effect and economic viability of shortline and regional railroads. And no paper or steel barriers should be allowed to stand, except for those – if any – that provides the only means of insuring safe operations.

Employee Issues. All unionized employee issues – particularly post merger changes in collective bargaining agreements – should be resolved through the collective bargaining process. Rail labor whether unionized or non-union deserves ethical treatment and respect for their labor. Non-union employee issues must be monitored to insure that there are no violations of federal laws. Mergers that include some accommodation of non-union and union workforces should be monitored to insure that all parties are fairly treated.

Merger-Related Public Interest Benefits. Past mergers have been “sold” like snake oil – almost no projected benefit was unrealistic enough to not be proposed. Projected benefits advanced as a rationale for approval of the merger should be fit into a timeline by the merger applicants and should be monitored by the Board. If a proposed merger fails to timely achieve the projected benefit, the Board should issue a directed line sale orders or directed service orders as necessary to insure that the projected benefit is realized.

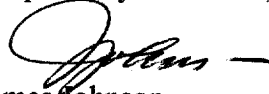
Cross-Border Issues. In the Ex Parte 582 hearings I stated that foreign control concerns me. I find it difficult to not feel parochial and protectionist when commenting on this issue, even though I am only asking that the Board consider establishing rules similar to current Canadian law on control and record retention. In Canada the majority of a corporation’s board must be Canadian citizens and the corporation’s headquarters must be maintained in Canada. If we had laws or regulations identical to Canada, no Canadian railroad could own a U. S. railroad without having to choose which country’s law to violate.

The Board must not lose sight of the fact that even though Canada has **usually** been allied with the U. S., it is **always** a separate sovereign nation unwilling to be dictated to, or subservient to, the U. S. Canadian control of our rail infrastructure is only the visible part of the issue. A Chinese ocean carrier now owns the terminals at both ends of the Panama Canal. We need to think of how we deal with a Chinese purchase of one or more Class I rail carriers. The implications are staggering in light of the saber rattling that China has done over Taiwan.

Any combination of railroads that includes a Canadian railroad will have to be headquartered in Canada and the majority of its Board of Directors will have to be Canadian citizens to comply with Canadian law. Any combination that includes Canadian National can be reasonably expected to precipitate a second combination that includes Canadian Pacific. Such an occurrence would result in most of the Class I rail infrastructure of the U. S. being controlled from Canada and headquartered outside the jurisdiction of the Board. Worse, the headquarters would be beyond the jurisdiction of every U. S. court of every description, including the Supreme Court of the United States.

I thank you for the opportunity to submit the above comments. I ask you to focus on what I believe are the primal issues transcending a simple merger policy.

Respectfully submitted,


A handwritten signature in black ink, appearing to read 'James Johnson', followed by a horizontal line.

James Johnson
Traffic Manager
Empire Wholesale Lumber Co.
PO Box 249
Akron OH 44309
(330) 434-4545

Dated May 12, 2000

CERTIFICATE OF SERVICE

I hereby certify that this 12th day of May, 2000, I have served a copy of the forgoing on all known parties of record on the Service List in accordance with the Board's Rules of Practice,


James Johnson